

§ 17.69

§ 17.69 Review within HUD of a determination that an amount is past due and legally enforceable.

(a) *Notification by the debtor.* A debtor who receives notice of intent to offset pursuant to § 17.65 has the right to a review of the case and to present evidence that all or part of the debt is not past due or not legally enforceable. The debtor may send a copy of the notice with a letter notifying the Office of Appeals of his or her intention to present evidence. Failure to give this notice shall not jeopardize the debtor's right to present evidence within the 60 calendar days provided for in paragraph (b) of this section. If the Office of Appeals has additional procedures governing the review process, a copy of the procedures shall be mailed to the debtor after the request for review is received and docketed by the Office of Appeals.

(b) *Submission of evidence.* If the debtor wishes to submit evidence showing that all or part of the debt is not past due or not legally enforceable, the debtor must submit such evidence to the Office of Appeals within 60 calendar days after the date of the notice of intent to offset. Failure to submit evidence will result in a dismissal of the request for review by the OA.

(c) *Review of the record.* After timely submission of evidence by the debtor, the OA will review the evidence submitted by the Department that shows that all or part of the debt is past due and legally enforceable. The decision of an administrative judge of the OA will be based on a preponderance of the evidence as to whether there is a debt that is past due and whether it is legally enforceable. The administrative judge of the OA shall make a determination based upon a review of the evidence that comprises the written record, except that the OA may order an oral hearing if the administrative judge of the OA finds that:

(1) An applicable statute authorizes or requires the Department to consider a waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

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(d) *Previous decision by an administrative judge of the Office of Appeals.* The debtor is not entitled to a review of the Department's intent to offset if an administrative judge of the OA has previously issued a decision on the merits that the debt is past due and legally enforceable, except when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

§ 17.71 Request for hearing.

The debtor shall file a request for a hearing with the OA at the address specified in the notice or at such other address as the OA may direct in writing to the debtor.

§ 17.73 Determination of the HUD Office of Appeals.

(a) *Determination.* An administrative judge of the OA shall issue a written decision that includes the supporting rationale for the decision. The decision of the administrative judge of the OA concerning whether a debt or part of a debt is past due and legally enforceable is the final agency decision with respect to the past due status and enforceability of the debt.

(b) *Copies.* Copies of the decision of the administrative judge of the OA shall be distributed to HUD's General Counsel, HUD's Chief Financial Officer (CFO), or other appropriate HUD program official, the debtor, and the debtor's attorney or other representative, if any.

(c) *Notification to the Department of the Treasury.* If the decision of the administrative judge of the OA affirms that all or part of the debt is past due and legally enforceable, HUD shall notify the Treasury after the date that the determination of the OA has been issued under paragraph (a) of this section and a copy of the determination has been received by HUD's CFO or other appropriate HUD program official. No referral shall be made to the Treasury if the review of the debt by an administrative judge of the OA subsequently determines that the debt is not past due or not legally enforceable.